No. 84-822

Office - Supreme Court, U.S.
FILED
MAR 29 1985
ALEXANDER L. STEVAS
CLERK

IN THE

# Supreme Court of the United States

October Term, 1984

---

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO et al.,

*Petitioners,*

*v.*

HAROCO, INC. et al.,

*Respondents.*

---

**On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

---

## BRIEF FOR THE STATE OF NEW YORK AS *AMICUS CURIAE*

---

ROBERT ABRAMS
Attorney General of the
State of New York
*Attorney for Amicus Curiae*
Two World Trade Center
New York, New York 10047
(212) 488-3323

ROBERT HERMANN
Solicitor General of the
State of New York

R. SCOTT GREATHEAD
First Assistant Attorney General

SUSAN BELGARD
Chief of Appeals and Civil Enforcement
Organized Crime Task Force
*Of Counsel*

# TABLE OF CONTENTS


| | PAGE |
|---|---|
| Interest of *Amicus Curiae* | 1 |
| Statement | 2 |
| Summary of Argument | 2 |
| Argument | |
| A. RICO Injury Is Injury Proximately Caused by a Violation of §1962 | 4 |
| B. Activity "Characteristic of Organized Crime" Is Incorporated in §1961 | 15 |
| C. The Person/Enterprise Distinction And Entity Responsibility For Agents' Acts | 19 |
| Conclusion | 23 |

## TABLE OF AUTHORITIES


PAGE

***Cases:***

Bankers Trust Co. v. Rhoades, 741 F.2d 511 (2d Cir. 1984), *petition for cert. filed,* Oct. 24, 1984 ..... 4, 5

Bennett v. Berg, 685 F.2d 1053 (8th Cir. 1982), *modified en banc,* 710 F.2d 1361, *cert. denied sub nom.,* Prudential Ins. Co. v. Bennett, 104 S.Ct. 527 (1983) ..... 8, 15

Bunker Ramo Corporation v. United Business Forms, Inc., 713 F.2d 1272 (7th Cir. 1983) ..... 15

Commonwealth of Massachusetts v. Beneficial Finance Co., 360 Mass. 188, 275 N.E.2d 33 (1971) .... 22

Copperweld Corp. v. Independence Tube Corp., 104 S.Ct. 2731 (1984) ..... 21

First National Bank in Plant City v. Dickinson, 396 U.S. 122 (1969) ..... 18

Haroco, Inc. v. American National Bank of Chicago, 747 F.2d 384 (7th Cir. 1984), *petition for cert. granted* Jan. 14, 1985 ..... *passim*

In re Olympia Brewing Co. Securities Litigation, (No. 77C 1206, N.D. Ill., Dec. 18, 1984) ..... 22–23

Jacobellis v. Ohio, 378 U.S. 184 (1964) ..... 18

Moss v. Morgan Stanley, Inc., 719 F.2d 5 (2d Cir. 1983), *cert. denied sub nom.,* Moss v. Newman, 104 S.Ct. 1280 (1984) ..... 15

Owl Construction Co., Inc. v. Ronald Adams Contractor, Inc., 727 F.2d 540 (5th Cir), *cert. denied,* 105 S.Ct. 118 (1984) ..... 15





PAGE

Philbrook v. Glodgett, 421 U.S. 707 (1975) ..... 8, 14

Russello v. United States, 464 U.S. 16, 104 S.Ct. 296 (1983) ..... 11, 12

Sedima, S.P.R.L. v. Imrex Co., Inc., 741 F.2d 482, (1984), *petition for cert. granted,* Jan. 15, 1985 4

State of Maryland v. Buzz Berg Wrecking Co., 496 F. Supp. 245 (D.Md. 1980) ..... 11

State of New York v. O'Hara, 595 F. Supp. 1101 (W.D.N.Y. 1984) ..... 14

United States v. Bright, 630 F.2d 804 (5th Cir. 1980) 10

United States v. Baker, 617 F.2d 1060 (4th Cir. 1980) 10

United States v. Cauble, 706 F.2d 1322 (5th Cir. 1983), *cert. denied,* 104 S.Ct. 996 (1984) ..... 10

United States v. Cincotta, 689 F.2d (1st Cir.), *cert. denied,* 459 U.S. 991 (1982) ..... 22

United States v. Elliott, 571 F.2d 880, 903 (5th Cir.), *cert. denied,* 439 U.S. 953, 99 S.Ct. 349 (1978) .... 10

United States v. Forsyth, 560 F.2d 880, 903 (5th Cir.), *cert. denied,* 439 U.S. 953, 99 S.Ct. 349 (1978) .... 11

United States v. Frumento, 563 F.2d 1083 (3d Cir. 1977), *cert. denied,* 434 U.S. 1072 (1978) ..... 11

United States v. Herman, 589 F.2d 1191 (3d Cir. 1978) ..... 10

United States v. Janotti, 729 F.2d 213 (3d Cir. 1984) 10

United States v. Karas, 624 F.2d 500 (4th Cir. 1980) 10

United States v. Lavin, 504 F. Supp. 1356, 1359 (N.D. Ill. 1981) ..... 11

United States v. Lee Stoller Enterprises, 652 F.2d 1313 (7th Cir. 1981) ..... 10

United States v. Mandel, 591 F.2d 1347 (4th Cir.), *vacated in part,* 602 F.2d 653 (en banc) *reh'g denied,* 609 F.2d 1076 (1979), *cert. denied,* 445 U.S. 961, 100 S.Ct. 1647 (1980) ..... 9

PAGE

United States v. Nerone, 563 F.2d 836 (7th Cir. 1977) .. 9
United States v. Turkette, 452 U.S. 576 (1981) ..... 11
United States v. Webster, 639 F.2d 174 (4th Cir. 1981), *modified*, 669 F.2d 185 (1982) ..... 9
United States v. Whitehead, 618 F.2d 523 (4th Cir. 1980) ..... 10

***Federal Statutes:***

15 U.S.C. §1 ..... 21, 22
18 U.S.C. §1961 ..... 2, 3, 11
18 U.S.C. §1962 ..... *passim*
18 U.S.C. §1963 ..... 11
18 U.S.C. §1964 ..... *passim*
18 U.S.C. §1968 ..... 11

***Miscellaneous:***

Blakey, Bennett v. Berg: *The RICO Civil Fraud Action in Context*, 58 Notre Dame L. Rev. 237 (1982) 23
Daily News, February 24, 1985, p. 3, col. 1 ..... 17
McClellan, *The Organized Crime Control Act or Its Critics: Which Threatens Civil Liberties?*, 46 Notre Dame L. Rev. 55 (1970) ..... 26
Note, *Developments in the Law: Corporate Crime—Regulating Corporate Criminal Behavior through Criminal Sanctions*, 92 Harvard L. Rev. 1227 (1979) ..... 22
16 Cong. Rec. at 18,940 ..... 15
Cook, "The Invisible Enterprise," *Forbes*, September 1980, p. 60 ..... 16, 17, 18
Websters New World Dictionary (2d Coll. ed. 1980) .... 7

## Interest of *Amicus Curiae*

The Attorney General of the State of New York submits this *amicus* brief in support of Respondents Haroco, Inc., Roman Ceramics, Inc., California Originals, Inc. and Mike Wayne Distilled Products Co. (together referred to as "Haroco"). In submitting this brief, New York State incorporates by reference the "Interest of Amicus Curiae" statement set forth in its brief in *Sedima, S.P.R.L.* v. *Imrex Company, Inc.*, No. 84-648, filed on February 28, 1985. In asserting these interests, we again aver that curtailing the scope and applicability of civil RICO, 18 U.S.C. §1964(c), as suggested by petitioners and *amicus*, the American Bankers Association ("ABA"), would seriously undermine the ability of the State and its citizens to obtain full redress for injury caused by RICO violations and would virtually eliminate RICO's effectiveness in rendering crime unprofitable.

We hereby adopt the reasoning and conclusions advanced in support of Respondents in the *amicus* brief submitted by the Attorney General of the State of Arizona and thirty-two sister states and offer additional grounds in support thereof.

## Statement

We respectfully refer the Court to Respondent's brief for a statement of the factual background and legal proceedings below.

Petitioners American National Bank and Trust Company of Chicago, Walter E. Heller International Corp. and Ronald J. Grayheck ("ANB," "Heller International" and "Grayheck") raise the question whether civil RICO plaintiffs may recover treble damages, pursuant to 18 U.S.C. §1964(c), for injury caused only by the racketeering activity specified in 18 U.S.C. §1961 or whether plaintiffs must also demonstrate that such injury resulted from defendant's "use" of and engagement in those racketeering activities by acquiring, operating or maintaining an interest in, or conducting, or participating in the conduct of, an interstate or international enterprise.[1]

## Summary of Argument

Petitioners correctly assert that a RICO injury requires proof of a pattern of racketeering activity plus the use of that pattern to acquire, maintain or conduct an enterprise's affairs. This formulation adheres to the plain meaning of civil RICO, 18 U.S.C. §1964(c), and gives meaning and effect to all of the statutory language. We submit that the Seventh Circuit did, in fact, consider both these parts of §1962 in its examination of RICO injury, and did not base recovery under §1964(c) on injury from the predicate acts alone.

1. In its *amicus* brief, the American Bankers Association raises a separate question, discussed by the court below, but not addressed herein by petitioners, *i.e.*, whether a single entity can be both the "person" who commits the racketeering acts and the enterprise which the person is "employed by" or "associated with" under §1962. We respond to this issue in Part C of our brief. Amicus suggests that RICO should be interpreted to apply to activities "characteristic of organized crime," a contention we address in Part B herein.



The core of petitioners' brief, however, addresses the nature of the relationship intended by the phrases "employed by" and "associated with" in §1962(c). Petitioners wrongly assert that §1962(c)[r] gives rise to civil liability only where defendants dominate or manage the affairs of the enterprise or where the proscribed pattern of racketeering activity is an integral part of the enterprise's affairs. This interpretation of §1962(c) ignores the statutory language rendering defendants answerable where they "conduct, or *participate, directly or indirectly,* in the conduct of [an] enterprise's affairs through a pattern of racketeering activity . . ." and severely undercuts RICO's effectiveness.

In its *amicus* brief, the ABA goes astray by asserting that the courts should focus not on the question of injury but on whether the alleged misconduct is "characteristic of organized crime"—a determination already incorporated in the statute by the very selection of the proscribed racketeering activities set out in §1961. *Amicus* also errs in its suggestion that parent and wholly-owned subsidiary corporations cannot be held liable for §1964(c) injury because their unity of interest makes them both the "person" which commits the conduct proscribed by §1962(c) and the "enterprise" whose affairs are conducted thereby. We submit that when enterprises such as corporations are the instrumentality of the pattern of racketeering, their agents are the statutory persons, and the corporations may be held liable under the doctrine of *respondeat superior.*

## ARGUMENT

### A. RICO Injury Is Injury Proximately Caused by a Violation of §1962

Taking as axiomatic the precept that expansion or restriction of a statutory enactment is the province of Congress, not the courts, petitioners assert that the type of injury RICO was intended to redress may easily be discerned from the plain meaning of 18 U.S.C. §1964(c) ("civil RICO"). (Brief at 9) Section 1964(c) provides:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fees.

In its decision below, the Seventh Circuit held that "this 'by reason of' language . . . simply imposes a proximate cause requirement on plaintiffs." *Haroco, Inc.*, v. *American National Bank and Trust Co.*, 747 F.2d 384, 398 (1984). Petitioners concurred with the Seventh Circuit's proximate cause analysis (Brief at 12, 28-29)[2] and we agree that it is

2. Petitioners reject the Second Circuit's analyses in *Sedima, S.P.R.L.* v. *Imrex Co., Inc.*, 741 F.2d 482, (1984), *petition for cert. granted*, Jan. 15, 1985, and *Bankers Trust Co.* v. *Rhoades*, 741 F.2d 511 (1984), *petition for cert. filed*, Oct. 24, 1984, which requires a "distinct" or "different" injury, stating

> Section 1964 does not, however, necessarily demand that the injury be different from an injury suffered by the underlying predicate acts. . . . Thus, if the RICO violation is established and it is determined that the plaintiff was injured by reason of the violation, a court need not draw a finer line and differentiate between the injuries caused by the underlying acts and those caused by the Section 1962 violation.

(Brief at 29, footnote omitted)



sound. But petitioners objected that "The [Seventh Circuit's] analysis fell short . . . because it misapprehended what constitutes 'criminal conduct in violation of Section 1962' (Brief at 12), pointing out that such violation requires the commission of a pattern of racketeering activity *and* "a particular use of the pattern in connection with an enterprise." (*Id.* at 12-14). Petitioners contended that the Seventh Circuit had dropped the "use" element from its analysis, thereby reducing the §1962 violation to a §1961 violation and equating injury from the §1962 violation to injury from the predicate acts alone.

We agree with petitioners that a §1962 violation is committed by the proscribed racketeering activity *and* the use of that activity as set out in §1962. Indeed, we assert that the Seventh Circuit had articulated the very test propounded by petitioners in setting forth the elements of a section 1962(c) violation. The *Haroco* court stated:

> To allege a violation of section 1962(c), the plaintiff must allege that the defendant (1) was employed by or associated with (2) an enterprise engaged in, or the activities of which affected, interstate, or foreign commerce, and (3) that the person conducted or participated in the conduct of the enterprise's affairs (4) through a pattern of racketeering activity.

747 F.2d at 387. Having established these factors as elements of a §1962 violation, the *Haroco* court then went on to reject the argument in *Bankers Trust Co.* v. *Rhoades*, 741 F.2d 511 (2d Cir. 1984), *petition for cert. filed*, October 24, 1984, that each element of the RICO violation must be a "but-for" cause of a civil RICO plaintiff's injury. *Haroco* rejected the *Bankers Trust* analysis because it

applied the but-for rule in a manner that eliminated recovery for injury caused by the predicate acts even where the pattern of racketeering activity actually affected the enterprise's affairs and all other elements of §1962 were met, and restored the primary purpose of the RICO statute and of RICO treble damage recoveries, holding:

> We conclude that a civil RICO plaintiff need not allege or prove injury beyond any injury to business or property resulting from the underlying acts of racketeering. Plaintiff's allegations of injury in this case —excessive interest charges resulting from defendants' alleged fraudulent scheme to overstate the prime rate—satisfy the requirements of 18 U.S.C. §1964(c).
>
> *This holding by no means renders superfluous the requirement in section 1964(c) that the plaintiff be injured "by reason of" a violation of section 1962.* As we read this "by reason of" language, it simply imposes a proximate cause requirement on plaintiffs. The criminal conduct in violation of section 1962 must, directly or indirectly, have injured the plaintiff's business or property. . . .

*Id.* at 398. (Emphasis added) Petitioners' complaint that *Haroco* required only injury by reason of the predicate acts ignored *Haroco's* clear statement of the §1962 violation and misperceived *Haroco's* real concern—that recovery for predicate act injury not be precluded by *Bankers Trust's* erroneous application of the *but-for* causation test.

In the guise of attacking *Haroco* for its purported failure to include the "use" aspect of §1962 in its proximate cause analysis, petitioners slipped in an argument not directly raised in their petition for *certiorari,* but of critical importance in RICO cases, *viz.,* that §1962(c) is violated only where a defendant's use of the pattern of racketeering activity amounts to *control* over the affairs of the enterprise.[3] We assert that this position flies in the face of the plain meaning of §1962(c), and that it fails to distinguish between concepts of *enterprise corruption* articulated in §1962 and theories of *enterprise liability* developed under the common law. (See Part C, *infra*).



Section 1962(c) specifically speaks of the use of the racketeering pattern *directly or indirectly,* and provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, *to conduct* or *participate, directly or indirectly*[4] *in the*

3. Although petitioners raise this argument in the context of civil RICO, it obviously bears the same implications in finding defendants criminally culpable.

4. The plain meanings of the pivotal terms used in §1962(c) are as follows:

> Conduct: 1. to show the way to; lead; guide;
> 2. to manage, control, or direct
>
> Associate: 1. to join together; connect; combine;
> 2. to bring (a person) into relationship with oneself or another as companion, partner, friend etc.
>
> Participate: to have or take a part or share in.
>
> Directly: 1. in a direct way or line; straight;
> 2. without a person or thing coming between; immediately
>
> Indirect: *a*) not straight; deviating; roundabout;
> (*b* not straight to the point, or to the person or thing aimed at [an indirect reply]; . . . *d*) not immediate, secondary [indirect result]
>
> Websters New World Dictionary (2d Coll. ed. 1980)

*conduct of* such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.[5]

(Emphasis added). In their attempt to narrow civil RICO by hobbling §1962, petitioners argue that the pattern of racketeering activity must be an "integral part of the enterprise's affairs" carried out by persons who "direct the course of or manage the enterprise's affairs" (Brief at 17-22).[6]

We submit that cases suggesting that §1962 persons must manage or direct the affairs of an enterprise involved situations where the enterprise had been *used as an instrumentality*[7] of the alleged §1962 violation and was,

5. This argument applies equally to §1962(a) and (b) which provide in relevant part:

> (a) It shall be unlawful for any person who has received any income derived, *directly or indirectly,* from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, *directly or indirectly,* any part of such income, or the proceeds of such income, in acquisition of any interest in or the establishment or operation of, any enterprise. . . .
>
> (b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, *directly or indirectly,* any interest in or control of any enterprise . . . .

6. Petitioners justify their two-prong test—predicate acts plus unlawful use of the pattern—by citing *Philbrook* v. *Glodgett,* 421 U.S. 707, 713 (1975) for the proposition that "in expounding a statute, the court must not be guided by a single word or sentence, but by the entire provisions of the law," (Brief at 14), but they immediately abandon this admonition by pointedly ignoring the statutory language proscribing the use of the pattern "to conduct, or *participate, directly or indirectly,* in the conduct of" the enterprise's affairs.

7. In Bennett v. Berg, *The RICO Civil Fraud Action in Context,* 58 Notre Dame L. Rev. 237, 307-25 (1982), Prof. G. Robert Blakey notes that a RICO enterprise may be a "victim, prize, instrument or perpetrator."



therefore, being *sued as a defendant, see, e.g. Bennett* v. *Berg,* 685 F.2d 1053 (8th Cir. 1982) *modified en banc,* 710 F.2d 1361, *cert. denied sub nom., Prudential Ins. Co.* v. *Bennett,* 104 S.Ct. 527 (1983), or where an accused individual contended that the affairs of the enterprise were unaffected by the objectionable conduct, *see, e.g., United States* v. *Mandel,* 591 F.2d 1347 (4th Cir.), *vacated in part on other grounds by an equally divided court,* 602 F.2d 653 (4th Cir.) (en banc) (per curiam), *reh'g denied,* 609 F.2d 1076 (4th Cir. 1979), *cert. denied,* 445 U.S. 961 (1980). We suggest that analysis of enterprise corruption under §1962 involves totally separate concerns from analysis of §1964(c) enterprise liability; that analysis of §1962 should not be constrained by concern for inappropriate imposition of RICO sanctions or remedies; and that a finding of enterprise *corruption* under §1962 does not necessarily require a finding of enterprise *liability* under §1964(c).

The distinction is most obvious where the charged enterprise is a victim and the pattern of racketeering activity benefits the culpable persons to the detriment of the infected enterprise. *See United States* v. *Webster,* 669 F.2d 185 (4th Cir. 1982), *modifying* 639 F.2d 174 (1981). ("The proper question should have been whether the affairs of the [charged enterprise] were conducted through the pattern of racketeering activity, not whether [those affairs] were benefitted or advanced or whether profit to the [enterprise] resulted." 669 F.2d at 186-87).[8]

8. Where the affairs of the enterprise are not affected, or in any way impacted by the pattern of racketeering, there is no §1962 violation. See *United States* v. *Nerone,* 563 F.2d 836 (7th Cir. 1977), *cert. denied, Helfer* v. *United States,* 435 U.S. 951 (1978) ("The Government's case must fail because of a total want of proof of the connection between the racketeering activities and the affairs of Maple Manor Inc. [the enterprise]. *Id.* at 852.)

Had Congress wished to limit §1962 in the manner petitioners suggest, it would simply have said "conduct, manage or direct such enterprise's affairs." Instead Congress used the phrase, "participate, directly or indirectly." Moreover, Congress chose very broad terms to describe the relationship between the "person" and the "enterprise." Those relational terms—"employed by or associated with"[9]

9. In the seminal case of *United States* v. *Elliott,* 571 F.2d 880, 903 (5th Cir.) *cert. denied,* 439 U.S. 953 (1978), the court explicitly stated:

> The substantive proscriptions of the RICO statute apply to insiders and *outsiders*—those merely "associated with" an enterprise—who participate directly and *indirectly* in the enterprise's affairs through a pattern of racketeering activity. 18 U.S.C. §1962(c). Cf. *United States* v. *Forsyth,* 560 F.2d 1127, 1135-36 (3d Cir. 1977). Thus, the RICO net is woven tightly to trap even the smallest fish, those peripherally involved with the enterprise.

In *United States* v. *Cauble,* 706 F.2d 1322 (5th Cir. 1983), *cert. denied,* 104 S.Ct. 996 (1984), the court simply asked whether "the predicate acts had some affect on the lawful enterprise." Cases broadly interpreting "associated with" include: *United States* v. *Janotti,* 729 F.2d 213 (3d Cir.), *cert. denied,* 105 S.Ct. 243 (1984) (City Councilman who introduced fictitious shiek to law firm as a potential client was sufficiently "associated with" that firm); *United States* v. *Whitehead,* 618 F.2d 523 (4th Cir. 1980) (prosecuting attorney was sufficiently associated with prostitution ring to which he offered protection); *United States* v. *Bright,* 630 F.2d 804 (5th Cir. 1980) ("The final element of a RICO violation is proof that the defendant participated in the enterprise through a pattern of racketeering activity. Bright's [owner of a bail bonding agency] sole participation in the enterprise took the form of bribery of [Sheriff] Hamilton. . . . There was sufficient evidence by which a jury could find that Bright participated in the affairs of the Sheriff's office by bribing the Sheriff." *Id.* at 830); *United States* v. *Karas,* 624 F.2d 500 (4th Cir. 1980), *cert. denied,* 449 U.S. 1078 (1981) (outsiders convicted of bribing county law officers); *United States* v. *Lee Stoller Enterprises,* 652 F.2d 1313 (7th Cir.), *cert. denied,* 454 U.S. 1082 (1981) (individual and corporate defendants convicted under 1962(c) scheme of kickbacks to sheriff's office); *United States* v. *Baker,* 617 F.2d 1060 (4th Cir. 1980) (outsider convicted of arranging payment of bribes to sheriff's office); *United States* v. *Herman,* 589 F.2d 1191 (3d Cir.

*(footnote continued on next page)*



—cannot reasonably be interpreted to refer only to persons who direct an enterprise's affairs.

Moreover, in arguing for a narrow construction of §1962, petitioners ignore Congress' explicit mandate that "the provisions of this title shall be liberally construed to effectuate its remedial purposes," §904(a), Pub. L. 91-452, 84 Stat. 947, acknowledged and adhered to in *United States* v. *Turkette,* 452 U.S. 576 (1981). As this Court explicitly recognized in construing criminal RICO's forfeiture provisions, 18 U.S.C. §1963, Congress deliberately employed general terms in that portion of the statute "apparently because it was fully consistent with the pattern of the RICO statute in utilizing terms and concepts of breadth," *Russello* v. *United States,* 464 U.S. 16, 104 S.Ct. 296, 300 (1983), specificaly pointing to " 'enterprise' in §1961(4); 'racketeering activity' in §1961(1) (1976 ed. Supp. V); *and 'participate' in §1962(c).*" *Id.* (Emphasis added)

In attempting to avoid the breadth of "participate," expanded by the phrase, "directly or indirectly," petitioners argue that the liberal construction provision applies only to the actual "remedies" of RICO, §§1964 and 1968; that this mandate does *not* apply to §1962 itself; and that

1978), *cert. denied,* 441 U.S. 913 (1979) (upholding conviction of former state court magistrate for bribe receiving from bail agency/enterprise); *United States* v. *Frumento,* 563 F.2d 1083, 1090-91 (3d Cir. 1977), *cert. denied,* 434 U.S. 1072 (1978) (affirming RICO conviction of individual in charge of patronage for a Democratic Committee—enterprise was Pennsylvania's Department of Revenue's Bureau of Cigarette and Beverage Tax.); *United States* v. *Lavin,* 504 F.Supp. 1356, 1359 (N.D. Ill. 1981) ("even those defendants not directly employed by the Board of Appeals (the RICO enterprise) are within the statute since by soliciting and accepting property assessment complaints they were 'associated with' this enterprise"); *State of Maryland* v. *Buzz Berg Wrecking Co.,* 496 F.Supp. 245 (D. Md. 1980) (defendants included corporations and individuals who allegedly bribed director of construction for a city housing department).

such "statutory rules of construction" as RICO's liberal-construction directive "have no relevance when the statutory language is clear." These assertions are meritless. First, by its express terms, the liberal-construction clause applies to *all* the provisions of Title IX. That §1962 defines criminal RICO does not prevent liberal interpretation of its terms.[10] This Court noted, without any reservation as to its appropriateness, that "[s]o far as [it had] been made aware, this is the only substantive federal criminal statute that contains such a directive. . . ." *Russello* v. *United States,* 104 S.Ct. at 302.[11] Secondly, we submit that clear legislative mandates stand on different footing from judicially created rules of statutory construction and require adherence irrespective of the presence of ambiguity or other triggers for statutory construction.

The rule petitioners propose would eliminate recovery except in instances where defendants had achieved substantial domination and control over an enterprise. Until defendants gained that degree of involvement, they could

10. This statutorily mandated liberality need not extend to the racketeering activities themselves, which are made criminal by other statutory provisions.

11. Petitioners apparently misapprehend the "rule of lenity" and incorrectly confuse it with the concept of liberal construction. "The rule of lenity [or "leniency" as petitioners phrase it] which this Court has recognized in certain situations of statutory ambiguity . . . 'comes into operation at the end of the process of construing what Congress has expressed, not at the beginning *as an overriding consideration of being lenient to wrong-doers.*'" *Russello,* 104 S.Ct. at 303. (Emphasis added). It is intended to relieve defendants of an unfair result where some statutory ambiguity provides a less onerous alternative interpretation. (Petitioners concede, that RICO's provisions are not ambiguous. Brief at 10, 12). By contrast, an explicit congressional directive to *interpret* a statute liberally requires that the court take that approach from the beginning to the end of its analysis.



not be made to respond to civil RICO remedies, thus protracting the period during which defendants could victimize enterprises, with impunity. This result is absurd. RICO was designed to ruin *defendants,* not plaintiffs. Moreover, one of its central purposes was to prevent infiltration of legitimate businesses by criminal elements. To require plaintiffs to wait until such infiltration is virtually complete simply make no sense. We submit that a pattern of racketeering activity which corrupts or defrauds an enterprise constitutes the requisite direct or indirect participation in the conduct of that enterprise's affairs, as proscribed by §1962. Defendants should be held liable for RICO treble damages in such instances, irrespective of their stake in the management of the enterprises affairs.[12]

Because governmental entities provide most of their services to citizens through contractual arrangements with "outside" firms and individuals, adherence to the plain

12. Moreover, we submit that there is an important distinction between the concept of domination or management of an enterprise's affairs and the pattern of racketeering activity as an integral part of the enterprise's affairs. Obviously in cases of fraud, the business of the enterprise can be infected although its owners, directors and managers are uninvolved. Its affairs may nonetheless be subjected to fraudulent schemes, and fraud perpetrated by outsiders without the cooperation of insiders may go undetected for years.

Examining the facts of *Haroco,* however, we fail to understand how the conduct of the ANB defendants, in setting interest rates, did not and "could not" form the basis of allegations that those defendants were "directing or managing ANB's business through the overcharges of interest rates tied to prime rates." (Brief at 17) Banks are in the business of making loans and their gross earnings on those loans derive from the difference between the amount they charge customers as interest and the amount they paid for the funds they lend. The *Haroco* complaint appears to allege that an "integral part" of the enterprise's affairs was *directly* affected, an allegation involving far more than the minimal, indirect affect on the enterprise's affairs required by §1962.

meaning of the statute is of paramount importance.[13] There is nothing "incidental" about the pernicious effect that racketeering activity has on governmental enterprises and the citizens they serve and there is no sound policy reason to engraft onto §1964(c) a requirement that restricts RICO recovery to advanced cases of infiltration or corruption. In any event, whether public or private interests are involved, the plain language of §1962, including key terms such as "employed by," "associated with," "participate" and "directly or indirectly" must be given meaning and effect. *Philbrook* v. *Glodgett*. Petitioners' interpretation of these terms limits RICO's effectiveness to instances where defendants thoroughly ensnare an enterprise, sterilize its management, and, in some instances, artificially prolong the life of a company while stripping its assets. This "domination" theory gives racketeers license to do business through predicate offenses, unless and until they succeed in taking over management.

RICO does *not* require that the proscribed conduct permeate or be an integral part of the enterprise before its remedies can be utilized. This Court should not impose such a limitation.

13. In *State of New York* v. *O'Hara*, Civ. No. 83-1440C (W.D. N.Y. 1983), plaintiff sued the former city manager of the City of Niagara Falls, alleging that he had accepted a promise of employment with and other benefits from the company which was then negotiating with the City on a cleanup contract to clean up Love Canal. The contract ultimately cost the City in excess of $6,000,000 (plus $1,528,000 for insurance premiums), of which approximately $1,624,000 were "disallowed" against the terms of the contract under a New York State audit. Plaintiff alleges, *inter alia*, that the contract terms improperly favored the contractor as a result of the City Manager's unlawful conduct and the corporate defendant's fraud, and that the defendants should be held liable for RICO treble damages. This case was dismissed on the authority of *Sedima* and *Bankers Trust Co.*, 595 F.Supp. 1102 (1984).



## B. Activity "Characteristic of Organized Crime" Is Incorporated in §1961

In its *amicus* brief, the American Bankers Association raises two points; first, that the courts should analyze RICO *injury* by determining whether the underlying criminal *activity* is "characteristic of organized crime" (*Amicus* Brief at p. 8) and second, that the "person" and "enterprise" cannot be identical under §1962(c). We address these issues, although they do not appear to be raised by the petition herein, because they figure prominantly in RICO litigation and the courts are divided as to their resolution.

The first argument propounded by the ABA tracks *Sedima's* suggestion that RICO was intended to proscribe "mobster"-type activity, 741 F.2d 495-96, and is simply a variation of the "organized crime" requisite which has been rejected by all of the circuit courts which have considered it.[14] More importantly, RICO was structured to incorporate this concept by adopting as §1961 *predicate offenses* those activities which mobsters typically used. During the course of legislative debates, Senator McClellan observed that the predicate offenses "are characteristic of organized crime. [They] lend themselves to organized commercial exploitation. . . ." 16 Cong. Rec. at 18,940. As he explained in a subsequent article, "the Senate report does

14. *Owl Construction Co.* v. *Ronald Adams Contractor, Inc.*, 727 F.2d 540 (5th Cir.), *cert. denied*, 105 S.Ct. 118 (1984); *Moss* v. *Morgan Stanley, Inc.*, 719 F.2d 5, 21 (2d Cir. 1983), *cert. denied sub nom., Moss* v. *Newman*, 104 S.Ct. 1280 (1984); *Bunker Ramo Corp.* v. *United States Business Forms, Inc.*, 713 F.2d 1272 (7th Cir. 1983); *Bennett* v. *Berg*, 685 F.2d 1053 (8th Cir. 1982), *modified en banc*, 710 F.2d 1361, *cert. denied sub nom., Prudential Ins. Co.* v. *Bennett*, 104 S.Ct. 527 (1983).

not claim . . . that the listed offenses are committed *primarily* by members of organized crime, only that these offenses are characteristic of organized crime." McClellan, *The Organized Crime Control Act or Its Critics: Which Threatens Civil Liberties?*, 46 Notre Dame L. Rev. 55, 142 (1970). The selection principle espoused by the ABA (*Amicus* Brief at 8-9) has, therefore, already been drafted into the statute.

Moreover, the view that "organized crime" accomplishes its goals through "characteristic," and often violent, behavior is outdated. "Organized crime" has been called "America's biggest business," Cook, *The Invisible Enterprise, Forbes,* September 1980, p. 60, and its impact on the economy operates through sophisticated, often covert business transactions rather than obvious and violent criminal conduct. " 'The millions of dollars [organized crime] can throw into the legitimate economic system,' the [President's Commission on Law Enforcement and Administration of Justice] observed, 'give it the power to manipulate the price of shares on the stock market, to raise or lower the price of retail merchandise, to determine whether entire industries are union or nonunion, to make it easier for businessmen to continue in business.' That was thirteen years ago, and nothing has changed since." *Id.* at 61.[15] The racketeer as businessman has become part

15. The article continues:

> [M]oney is money, and the mob doesn't care where it makes it. New York's Johnny Dioguardi had a kosher-meat business, a business novelty company and a record store. California's Louis Tom Dragna runs a strictly legitimate gourmet business (Roberta Fashions). . . . Onetime Cleveland mobster Morris B. Dalitz used to run a string of laundries in the Midwest, main-

*(footnote continued on next page)*



of the popular culture. A newspaper article entitled *Mob Crowds Legit Biz* began: "In a dramatic scene from the Godfather II, young Michael Corleone tells associates that in a few years the mob will be totally involved in legitimate business." Daily News, February 24, 1985, p.3, col. 1.

Although there is a wealth of commentary critizing the broad applicability of civil RICO, no one has suggested a device capable of distinguishing those activities "characteristic of organized crime" more accurately than Congress did in setting forth the proscribed racketeering activities in §1961.[16] *Amicus* suggests none, relying instead

> tained a sizable investment portfolio in companies like Detroit Steel and the Rock Island Railroad, and now runs Rancho La Costa, the posh Teamster-financed residential resort on the Pacific. . . . In the East whole towns have been mob controlled for years—Long Branch, NJ was once one of the notable examples . . . . The energy crisis has brought the mob out in full force. We now have coal equipment theft, tax-shelter schemes, schemes for shortweighting customers or beating environmental control law. *** In the New York City area, 200,000 gallons of gasoline are disappearing every week. *** Organized crime may let the outsider, legitimate or otherwise, find out where the growth areas are, but it moves in when the potential is proved. That's what it did with pornography and the stolen auto-parts business and cigarette bootlegging. It's moving now into electronic games. . . .
>
> West Coast organized crime has been moving into auto dealerships, into seafood distribution, into trucking, meatpacking, and the garment business. In Houston and elsewhere, they're showing up in the nursing home industry. They are innovative, opportunistic and as fast-moving as any hotshot acquisitions man.
>
> *Forbes,* p. 62.

16. The ABA's argument in favor of activity "characteristic of organized crime" proceeds on the theory that while the §1961(5) definition of "pattern" only requires proof of two racketeering activities, it leaves room for courts to require more, thus giving the judiciary some basis upon which to differentiate conduct committed in a "fashion one would expect of true racketeers" in contrast to conduct which "show[s] little more than a garden variety misstatement of

*(footnote continued on next page)*

on a paraphrase of "Justice Stewart's famous comment on the problem of defining 'hard core pornography,' " *Jacobellis* v. *Ohio*, 378 U.S. 184, 197 (1964) (concurring opinion) "that '[c]ourts recognize a racketeering enterprise when they see it,' " and suggesting that the finder of fact should likewise be able to determine whether the acts alleged "were of such a nature as to be characteristic of organized crime." (*Amicus* Brief at 11-12)[17] In communities or industries where racketeering activity is the norm, *see e.g.*, *The Invisible Enterprise*, relying on "contemporary community standards" would simply insulate perpetrators. The more egregious and pervasive the conduct, the less the chance of recovery.

---

fact communicated through the mails in the course of an ordinary business transaction." (Brief at 9, footnote omitted) Unfortunately, as the *Forbes* article indicates, "true racketeers" often engage in practices which are not easily differentiated from "garden-variety fraud" which term includes bribery, coercion, extortion and conspiracy, the mainstays of "white collar crime." Moreover, ABA's argument that §1961 defines the "minimum" proscribed conduct relies on an inapt analogy. The ABA argues that a similar definitional problem arose in limiting the ability of national banks to establish branches where 12 U.S.C. §36(f) provided "that the term 'branch' 'shall be held to include any . . . branch place of . . . business at which deposits are received, or checks paid, or money lent. . . . This Court . . . has held that the performance of the three listed functions, or any of them,' was the '*minimum* content of the term "branch" . . . . [I]t may include more.' *First National Bank in Plant City* [v. *Dickinson*], 396 U.S. 122, 135 (1969) (emphasis supplied)." This argument cuts against ABA's position by suggesting not that the statutory provisions alone are insufficient but that conduct not *explicitly* proscribed by §1961(1) may constitute racketeering activity.

17. "We already expect fact finders to determine what are contemporary community standards, and what is patently offensive under those standards. It cannot be any less reasonable to ask that a fact finder determine whether a particular activity so far exceeds the community norm for doing business as to be classified as a racketeering activity rather than as a simple garden variety fraud."

*Amicus* Brief at 12-13.



## C. The Person/Enterprise Distinction And Entity Responsibility For Agents' Acts

*Amicus* next attempts to deal with the relationship between the defendant accused of engaging in a pattern of racketeering activity (the "statutory person" under §1962) and the "enterprise" whose affairs that person conducts or participates in, directly or indirectly, 18 U.S.C. §1962(c), and with the implications this distinction has on issues of liability. *Amicus* argues that §1962(c) requires separate entities and that under a configuration where the "statutory person" and the "statutory enterprise" are a single entity, the "statutory 'enterprise' . . . cannot be sued for damages." (*Amicus* Brief at 15). As previously noted, this statement confuses the person/enterprise problem with the issue of liability of the responsible party. (See pp. 8-12, *supra*)

*Amicus* posits its view on a model wherein the wrongdoer, "the statutory 'person[,]' is the analogue of organized crime, while the statutory 'enterprise' is the infiltrated business, victimized by . . . the 'person' whose activities Congress was aiming to deter and punish," (*Amicus* Brief at 16). This model, however, does not present any problem of statutory analysis because the victim enterprise and the "statutory person" are different entities. Under such facts, the enterprise would normally be the *plaintiff* seeking money damages, and not a party-defendant in a civil RICO action (unless it declined to sue and was, therefore, brought in by other injured parties as a nominal defendant in an appropriate case).

The separate-entity problem arises where the enterprise is the *instrumentality* or *perpetrator* and therefore the statutory person which has engaged in the pattern of racketeering activity. In that case, the person accused of committing the predicate offenses is the enterprise, and the argument is that the enterprise cannot "employ" or "associate with" *itself*. *Amicus'* analysis appears to throw into question whether, under this configuration, a perpetrator enterprise can be made to respond in RICO damages.

In *Haroco,* the Seventh Circuit sustained the complaint against defendant Heller International, ANB's holding company, reasoning that:

> plaintiffs here and the court in [*United States* v. *Hartley,* 678 F.2d 961, 987-90 (11th Cir. 1982), *cert. denied,* 459 U.S. 1170 (1983)] are correct when they argue that the corporate enterprise should be liable where it is the perpetrator, or the central figure in the criminal scheme. In that situation, the corporate deep pocket should certainly be subject to RICO liability. At the same time, the defendants here and Judge Shadur in *Parnes* [v. *Heinhold Commodities Inc.,* 548 F. Supp. 20, 23-24 (N.D. Ill. 1982)] are surely correct in saying that the corporate enterprise should not be liable when the corporation is itself the victim or target, or merely the passive instrument for the wrongdoing of others.

747 F.2d at 401. While the Seventh Circuit attempted to resolve the person/enterprise issue by noting that §1962(a) did not bear the same linguistic constraints as §1962(c), it also noted the availability of pleading alternatives which satisfy the separate entity requirement of §1962(c) and hold a perpetrator enterprise liable. Specifically, the Seventh Circuit noted; "Count I . . . alleges that ANB



violated section 1962(c) by conducting through a pattern of racketeering activity the affairs of its parent corporation, Heller International," *id.* at 402, and that it was "virtually self-evident that a subsidiary acts on behalf, and thus conducts the affairs, of its parent corporation." 747 F.2d at 402-403. (footnote omitted) *Amicus* first argues that the parent-subsidiary relationship is a neutral fact, and that a court should not hold the parent for acts of the subsidiary unless the evidence showed "some meaningful domination by one of those entities [the "person"] over the affairs of the other [the "enterprise"] in such a way as to cause the other to commit illegal activity." Without noting the logical conflict, *amicus* then shifts gears and attempts to apply this Court's analysis in *Copperweld Corp.* v. *Independence Tube Corp.,* 104 S.Ct. 2731 (1984), holding parents and subsidiaries incapable of conspiring with one another for purposes of Section 1 of the Sherman Act, 15 U.S.C. §1, to the issue of corporate responsibility for the acts of its agents. *Amicus* correctly cites *Copperweld* for the proposition that

> [a] parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousnesses, but one [,]

104 S.Ct. at 2742, but draws the wrong conclusion, suggesting that because of the unity of interest between the corporation and its subsidiaries, their relationship cannot satisfy the person/enterprise distinction. *Copperweld* proceeded on the theory that intracorporate conspiracy could not be made out under Sherman 1 because the statute required "two or more entities that previously pursued their own

interests separately . . . combining to act as one for their common benefit[,]'' *id.* at 2741, which the common interests of parent-subsidiaries defeated. As *Haroco* noted, this accommodation of divergent interests has no relevance to RICO concerns. ''[T]he Sherman Act is premised, as RICO is not, on the 'basic distinction between concerted and independent action.' '' 747 F.2d at 403, n.22, *citing Copperweld,* 104 S.Ct. at 2740. Whether persons and enterprises had independent or identical goals before they engaged in conduct constituting RICO violations has no bearing in determining RICO culpability.

We submit that the unity of interest between a corporation and its subsidiaries bolsters rather than undermines the relationship expressed by the terms ''employed by'' or ''associated with'' and serves as the very basis for liability. Differently expressed, corporations are liable for the wrongful conduct of their agents, whether those agents are individuals employed by the parent or subsidiary entities, under the doctrine of *respondeat superior.*[18]

> A corporation may be convicted for the criminal acts of its agents, under a theory of respondeat superior. But criminal liability may be imposed on the corporation only where the agent is acting within the scope of employment. That, in turn, requires that the agent be performing acts of the kind which he is authorized to perform, and those acts must be motivated—at least in part—by an intent to benefit the corporation.

*United States* v. *Cincotta,* 689 F.2d 238, 241-42 (1st Cir.), *cert. denied,* 459 U.S. 991 (1982), *cited in In re Olympia*

18. See Note, *Developments in the Law: Corporate Crime—Regulating Corporate Criminal Behavior through Criminal Sanctions,* 92 Harvard L. Rev. 1227 (1979); *Commonwealth of Massachusetts* v. *Beneficial Finance Co.,* 360 Mass. 188, 275 N.E.2d 33 (1971).



*Brewing Co. Securities Litigation,* (No. 77 C 1206 N.D. Ill. Dec. 18, 1984), *slip op.* at 29-30. There is no

> reason why federal law of corporate criminal liability . . . should not also apply to liability under RICO. . . . When the racketeering activity constitutes a fraud on or otherwise injures the corporation sought to be held liable, . . . an intent to benefit the master . . . would be wholly lacking in a case where the agent is stealing or otherwise hurting the master.

*Id.* at 31. *Accord, Haroco,* 747 F.2d at 401, *citing* Blakey, Bennett v. Berg: *The RICO Civil Fraud Action in Context, supra,* 58 Notre Dame L. Rev. at 307-25, for his discussion of RICO enterprise as ''victim, prize, instrument or perpetrator.'' Under the doctrine of *respondeat superior,* in cases involving an enterprise perpetrator, it would appear appropriate to allege that individuals who act as the enterprise's agents are statutory persons, that such enterprise is the statutory enterprise and to name *both* the individuals and the enterprise as defendants. This analysis is not complicated by the parent-subsidiary relationship, which is simply a form of associated entities, all of which act only through individuals. When properly distinguished, concepts of §1962 enterprise corruption may be liberally construed without improperly imposing enterprise liability or creating loopholes through which culpable parties avoid imposition of RICO remedies.

## Conclusion

RICO is a potent weapon in the fight against criminal infiltration of the economy. The breadth of its provisions should be honored by this Court. Attempts to narrow RICO's scope in a manner that would exclude recovery in

proper cases should not be adopted on the ground that a broader interpretation also permits recovery in arguably questionable cases. This Court should affirm the holding below.

Respectfully submitted,

ROBERT ABRAMS
Attorney General of the
State of New York
*Attorney for Amicus Curiae*
Two World Trade Center
New York, New York 10047
(212) 488-3323

ROBERT HERMANN
Solicitor General of the
State of New York

R. SCOTT GREATHEAD
First Assistant Attorney General

SUSAN BELGARD
Chief of Appeals and Civil Enforcement
Organized Crime Task Force
*Of Counsel*

# APPENDIX

# RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. §§ 1961-1964 (1978) (RICO)

**(relevant portions reprinted herein)**

## § 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of il-

legal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

* * *

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal



law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate . . . .

* * *

**§ 1962. Prohibited activities**

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an un-

lawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

**§ 1963. Criminal penalties**

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

(b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest



subject to forfeiture under this section, as it shall deem proper.

(c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

**§ 1964. Civil remedies**

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to,

prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interestate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.